IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Veerbhadra Singh Sisodia and others v. Rajasthan Council of Primary Education and Anr.

(1)S.B.CIVIL WRIT PETITION NO.4945/2004

Kanhaiya Lal Dashora and others v. Rajasthan Council of Primary Education and Anr.

(2)S.B.CIVIL WRIT PETITION NO.5855/2005

Ganpat Singh Panwar and others v. Rajasthan Council of Primary Education and Anr.

(3)S.B.CIVIL WRIT PETITION NO.6173/2005

Devendra Kumar and Anr. v. State of Rajasthan and Anr.

(4)S.B.CIVIL WRIT PETITION NO.5894/2004

Hari Ram Dindor and others v. Rajasthan Council of Primary Education and Anr.

(5)S.B.CIVIL WRIT PETITION NO.7161/2005

Brajendra Kumar Srivastava and Anr. v. State of Rajasthan and Anr.

(6)S.B.CIVIL WRIT PETITION NO.5505/2004

Mohan Lal and others v. Rajasthan Council of Primary Education and Anr.

(7)S.B.CIVIL WRIT PETITION NO.765/2006

Dinesh Kumar Sharma v. Rajasthan Council of Primary Education and Anr.

(8)S.B.CIVIL WRIT PETITION NO.7084/2005

Alpesh Gangawat and others v. Rajasthan Council of Primary Education and Anr.

(9)S.B.CIVIL WRIT PETITION NO.568/2006

Smt. Heena Pandya and others v. Rajasthan Council of Primary Education and Anr.

(10)S.B.CIVIL WRIT PETITION NO.3354/2006

PETITIONS UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

Date of Order :: 28th March, 2007

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.Mridul, Sr.Advocate, assisted by Mr. P.S.Chundawat, for the petitioners.
Mr. N.M.Lodha, Additional Advocate General with Mr. D.S.Rajvi, for the respondents.

....

BY THE COURT :

REPORTABLE

Prior to independence of the country the colonial regime established a system of education that had limited access and that denied mass education with view to emphasise on confirmism to socio, political and economic system prevailing in the country in those times. On account of that the Indian National Movement desired for an alternative educational system with an approach of “Education for Life” as said by Mahatma Gandhi and “Education for Self-development” as

reflected in great educational experiment made by Rabindra Nath Tagaur by establishing Shanti Niketan.

The founding fathers of our constitution recognised universalisation of educational system as a national goal, being a most effective weapon for nation building. The constituent assembly while adopting, enacting and giving to ourselves the Constitution of India under the directive principles of the State policy envisaged that the State shall endeavour to provide free and compulsory education for children upto 14 years of age within a period of 10 years. The education policies including the National Policy on Education 1986 (as revised in 1992) resolves to provide free and compulsory education of satisfactory quality to all children upto 14 years of age before commencing of 21st Century.

The parliament by the Constitution (86th Amendment) Act-2002 by inserting Article 21-A made the free and compulsory education to all children of the age of 6 to 14 years as a fundamental right in the terms that "State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may by law determine". By the same Amendment Act, the fundamental duty to provide opportunities for education to their children or wards, as the case may be, between the age of 6 to 14 years is prescribed for parents and guardians. To

realise ever cherished desire of Indian masses to have a literate nation, the Government of India and various State Governments made sincere efforts by introducing and implementing various projects for formal and non-formal education and the latest but not least is Sarva Shiksha Abhiyan (hereinafter referred to as “the SSA”), with following objects:-

> *All children in school, Education Guarantee Centre, Alternate School, 'Back-to-School' camp by 2003;
>
> *All children complete five years of primary schooling by 2007
>
> *All children complete eight years of elementary schooling by 2010
>
> *Focus on elementary education of satisfactory quality with emphasis on education for life
>
> *Bridge all gender and social category gaps at primary stage by 2007 and at elementary education level by 2010
>
> *Universal retention by 2010”

To implement “District Primary Education Project” (hereinafter referred to as “the DPEP”), a society in the name of Rajasthan Council of Primary Education (hereinafter referred to as “the Council”) was constituted and registered under the Rajasthan

Societies Registration Act, 1958 (hereinafter referred to as “the Act of 1958”). The Council was also nominated as nodal agency to execute the SSA in the State of Rajasthan, thus, by a notification (Anx.11) published in a daily newspaper “Rajasthan Patrika” Pali edition dated 26.9.2004 the Council invited eligible and desirous persons to face interviews in respect of appointments on deputation for various posts under SSA.

The grievance of the petitioners is arising from the notification referred above, however, as a preliminary objection a question is raised on behalf of the respondent Council about its amenability to writ jurisdiction being not an agency, instrumentality or authority of the State for the purpose of Part-III of the Constitution, hence before touching to the merits of the cases, the appropriate course considered is to examine merits of the objection.

The test to examine nature of a body as to whether that is a State, its agency or instrumentality are settled by Hon'ble Supreme Court in its various authoritative pronouncements.

In the case of Ramana Shetty v. The International Airport Authority of India and others (AIR 1979 SC 1628), Hon'ble Supreme Court summarised some of the factors necessary to be considered in

determining whether a body is an agency or instrumentality of the Government. The factors so summarised are as follows:-

> "19. xxxxx whether there is any financial assistance given by the State, and if so, what is the magnitude of such assistance whether there is any other form of assistance, given by the State, ad if so, whether it is of the usual kind or it is extra-ordinary, whether there is any control of the management and policies of the corporation by the State and what is the nature and extent of such control whether the corporation enjoys State-conferred or State protected monopoly status and whether the functions carried out by the corporation are public functions closely related to governmental functions."

While gathering some of the essential factors, Hon'ble Supreme Court also observed in the aforesaid case that this particularisation of the relevant factors is exhaustive because with increasing assumption of new tasks, growing complexities of management and administration and the necessity of continuing adjustment in relations between the corporation and Government calling for flexibility, adaptability and innovative skills, it is not possible to make an exhaustive enumeration of the tests.

In the case of Ajay Hasia etc. v. Khalid Mujib Sehravardi and others etc. (AIR 1981 SC 487),

the Apex Court held that the mode of creation of a body is immaterial for the purpose of determining as to whether that specific body is State, its agency or instrumentality. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a company or society created under or created by a statute.

In the case of Chander Mohan Khanna v. The National Council of Educational Research & Training and others (AIR 1992 SC 76), while considering the same issue, Hon'ble Supreme Court held as under:-

> “2. There are only general principles but not exhaustive test to determine whether a body is an instrumentality or agency of the Government. Even in general principles, there is no cut and dried formula which would provide correct division of bodies into those which are instrumentalities or agencies of the Government and those which are not. The powers, functions, finances and control of the Government are some of the indicating factors to answer the question whether a body is “State” or not. Each case should be handed with care and caution. Where the financial assistance from the State is so much as to meet almost entire expenditure of the institution, or the share capital of the corporation is completely held by the government, it would afford some indication of the body being impregnated with governmental character. It may be a

relevant factor if the institution or the corporation enjoys monopoly status which is State conferred or State protected. Existence of deep and pervasive State control may afford an indication. If the functions of the institution are of public importance and related to governmental functions, it would also be a relevant factor. These are merely indicative indicia and are by, no means conclusive or clinching in any case [See (i)Sukhdev Singh v. Bhagat Ram, (1975)1 SCC 421 : (AIR 1975 SC 1331); (ii)R.D.Shety v. International Airport Authority, (1979)3 SCC 489: (AIR 1979 SC 1628); (iii)Ajay Hasia v. Khalid Mujib Sehravardhi, (1981)1 SCC 722 : (AIR 1981 SC 487) and (iv)Som Prakash Rekhi v. Union of India, (1981)1 SCC 449 : (AIR 1981 SC 212)].

3. Art.12 should not be stretched so as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression “State”. A wide enlargement of the meaning must be tempered by a wise limitation. It must not be lost sight of that in the modern concept of Welfare State, independent institution, corporation and agency are generally subject to State control. The State control does not render such bodies as “State” under Article 12. The State control, however, vast and pervasive, is not determinative. The financial contribution by the State is also not conclusive. The combination of State aid coupled with an unusual degree of control over the management and policies of the body, and rendering of an important public service being the obligatory functions of

> the State may largely point out that the body is “State”. If the Government operates behind a corporate veil, carrying out governmental activity and governmental functions of vital public importance, there may be little difficulty in identifying the body as “State” within the meaning of Art. 12 of the Constitution. [See: (i) P.K.Ramchandra Iyer v. Union of India, (1984)2 SCC 141 : (AIR 1984 SC 541); (ii) Central Inland Water Transport Corporation v. Brojonath Gangoli, (1986)3 SCC 156 : (AIR 1986 SC 1571); and (iii) Tekraj Vasandhi alias K.L. Basandhi v. Union of India, (1988)2 SCC 260 : (AIR 1988 SC 469)].”

In the case of Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and others [(2002)5 SCC 111], Hon'ble Apex Court summed up its conclusion on the same issue as under:-

> “98.(1)Simply by holding a legal entity to be an instrumentality or agency of the State it does not necessarily become an authority within the meaning of “other authorities” in Article 12. To be an authority, the entity should have been created by a statute or under a statute and functioning with liability and obligations to the public. Further, the statute creating the entity should have vested that entity with power to make law or issue binding directions amounting to law within the meaning of Article 13(2) governing its relationship with other people or the affairs of other people –

their rights, duties, liabilities or other legal relations. If created under a statute, then there must exist some other statute conferring on the entity such powers. In either case, it should have been entrusted with such functions as are governmental or closely associated therewith by being of public importance or being fundamental to the life of the people and hence governmental. Such authority would be the State, for, one who enjoys the powers or privileges of the State must also be subjected to limitations and obligations of the State. It is this strong statutory flavour and clear indicia of power – constitutional or statutory, and its potential or capability to act to the detriment of fundamental rights of the people, which makes it an authority; though in a given case, depending on the facts and circumstances, an authority may also be found to be an instrumentality or agency of the State and to that extent they may overlap. Tests 1, 2 and 4 in Ajay Hasia enable determination of governmental ownership or control. Tests 3, 5 and 6 are "functional" tests. The propounder of the tests himself has used the words suggesting relevancy of those tests for finding out if an entity was instrumentality or agency of the State. Unfortunately thereafter the tests were considered relevant for testing if an authority is the State and this fallacy has occurred because of difference between "instrumentality and agency" of the State and an "authority" having been lost sight of sub silentio, unconsciously and undeliberated. In our opinion, and keeping in view the meaning which "authority" carries, the question

whether an entity is an “authority” cannot be answered by applying Ajay Hasia tests.

(2)The tests laid down in Ajay Hasia case are relevant for the purpose of determining whether an entity is an instrumentality or agency of the State. Neither all the tests are required to be answered in the positive nor a positive answer to one or two tests would suffice. It will depend upon a combination of one or more of the relevant factors depending upon the essentiality and overwhelming nature of such factors in identifying the real source of governing power, if need be by removing the mask or piercing the veil disguising the entity concerned. When an entity has an independent legal existence, before it is held to be the State, the person alleging it to be so must satisfy the court of brooding presence of the Government or deep and pervasive control of the Government so as to hold it to be an instrumentality or agency of the State.”

Applying the tests formulated by Hon'ble Supreme Court, the nature of the respondent Council, that has undertaken the SSA, an ambitious project of the Government, is required to be examined. The Council, a registered society under the Act of 1958, according to its Memorandum of Association, have the objectives as follows:-

“(a)To act as a autonomous and independent body for implementation of the Rajasthan

Primary Education Project as outlined in the project document to be published by Government of Rajasthan and its revised version that may be prepared on the basis of joint review from time to time.

(b)To extend the activities of the Council in selected districts of the State and to extend such specific activities of the Council to any part of the State as may be considered desirable by the State Government.

(c)To function as a social mission for bringing about a fundamental change in the primary education system, and through it, in the overall socio-cultural situation.

(d)to pursue the following specific objects of the Rajasthan Primary Education Project viz.

(i)Universalisation of Elementary Education through (a) access to primary, education for all children upto 14 years of age. (b) Universal participation till they complete the primary stage through formal or non-formal education programme. (c)Universal achievement atleast of Minimum Levels of Learning.

(ii)Modification in the educational system to serve the objects of women's equality and their empowerment.

(iii)Making necessary intervention to provide equal educational opportunity to children belonging to the Scheduled Castes,

Scheduled Tribes and other deprived sections of society.

(iv)Making education relevant to the working and living conditions of the people so that skills may be acquired improving in future their ability to cope with problems of livelihood, environment, and mother and child welfare, also developing in them healthy practices of cleanliness and hygienic living."

The Council is governed by a committee that consists of following persons:-

"(i)Education Minister Rajasthan State – President

(ii)Chief Secretary Government of Rajasthan – Vice President

(iii)Secretary to Government Education Department, Government of Rajasthan – Member

(iv)Development of Commissioner, Government of Rajasthan – Member

(v)Principal Secretary to Govt. Finance Deptt., Government of Rajasthan – Member

(vi)Commissioner, Family Welfare and Secretary, Ayurved – Member

(vii)Secretary, Women and Child Development – Member

(viii)Secretary to Government Social Welfare, Government of Rajasthan – Member

(ix)Special Secretary to Government, Education Department, Government of Rajasthan – Member

(x)One person drawn from non-government agencies engaged in education activities in the state to be nominated by the State Government – Member

(xi)Upto three heads of relevant State level institutions, engaged in technical resources development to be nominated by the State Government – Members

(xii)Representatives of teachers to be nominated by the State Government including women representatives. - Members

(a)One person to represent primary teachers.
(b)One person to represent instructors and other, functionaries engaged in adult education etc.
(c)Two teachers known for their commitment to primary education system, of which atleast one would be a woman.
(d)Two heads of Primary Schools known for their initiatives and contributions in elementary education (of which one would be a woman).

(xiii)Other ex-officio representatives of the Government of Rajasthan – Member

(a)Two heads of District Committees in the selected districts of the Project by

rotation with two persons retiring every year on the basis of seniority.

(b)Two Heads of Departments whose functions are related to Primary Education.

(xiv)Representative of the Central Government – Members

Three representatives of the Central Govt., to be nominated by the Ministry of Human Resource Development Department of Education, Govt. of India.

(xv)Two persons preferably from NGO's who have distinguished themselves in the area of education for scheduled castes, scheduled tribes and integrated education for the disabled, one person in each category, to be nominated by Central and State Government – Members

(xvi)Four women who have distinguished themselves in the areas of Primary Education, non formal education and adult education, two being nominated by the State Government and two by the Central Government – Members

(xvii)Director, National Council of Educational Research and Training – Member

(xviii)Director, National Institute of Educational Planning and Administration – Member

(xix)Secretary, Siksha Karmi Board, Rajasthan – Member

(xx)Project Director, Lok Jumbish Parishad Rajasthan – Member

(xxi)Director, Literacy and Continuing Education, Rajasthan – Member

(xxii)Two eminent educationists of whom one will be nominated by the Central Government and the other by the State Government – Member

(xxiii)All members of the Executive Committee not included above – Members

(xxiv)State Director D.P.E.P. Rajasthan – Member Secretary."

The source of finance to the Council is Grant in Aid made by the Central Government and State Government for furtherance of its objects. Pertinent to note here that at present Council is receiving aid to execute the SSA by Government of India and Government of Rajasthan. No grant, donation or assistance from foreign agency and other external agencies can be received by the Council without prior approval of the Central Government. The Council is required to maintain proper accounts and other relevant records for the purpose of accounting. It is also subject to the provisions of the Controller and Auditor General (Duties, Powers and Conditions of Service) Act, 1971 (hereinafter referred to as "the Rules of 1971"). The State Government is having power

to review the work and progress of the Council and to hold inquiries into the affairs thereof and also to report thereon in such manner as the government may stipulate. In the event of winding up or dissolution of the Council its debts and liabilities, any asset and property shall be dealt with in such manner as the government may determine under the provisions of the Act of 1958.

The Council is implementing the SSA, an ambitious project of the Government of India and the Government of Rajasthan and under that project the Council has established a complete administrative set up, therefore, to determine nature of it a broad assessment of the project concerned is also necessary.

The projects for universalisation of elementary education undertaken by Government of India or the State Government are part of national policy for building of nation through mass education. The SSA is an effort for universalisation of elementary education by community ownership of the school system. It is a response to the demand for quality, basic education all over the country and is an attempt to provide an opportunity for improvement of human capabilities to all children in a mission mode. It is a programme with a clear time framework for universal elementary education with an opportunity for promoting social justice through basic education. It is also an

effort for effective involvement of Panchayat Raj Institutions, Management Committees, Village and Urban Slump Level Committees, Parent Teachers' Association, Mother Teachers' Association, Trible Autonomous Council and other Grass Route Levels Structures in the management of the elementary schools. It is one of the most ambitious projects under the partnership between the Central, State and Local Government. The significance of the SSA can be well noticed with the statement of the Union Minister for Human Resource Development Department that published on October 29, 2004 in daily newspaper "The Hindu", that reads as follows:-

> "NEW DELHI, OCT. 28. The Union Human Resource Development Minister, Arjun Singh, today described the Sarva Shiksha Abhiyan (SSA) initiated by his predecessor, Murli Manohar Joshi, as a "national agenda" which should not be affected by political differences.
>
> Addressing a conference of Education Ministers from all States and Union Territories here, Mr. Singh said that the SSA was the heart and soul of the education system and urged all States to implement it on a mission mode. Stating that the money collected through the education cess was being parked in a non-lapsable fund, he said: "We have to go beyond paying platitudes and prove ourselves in making SSA a success as we cannot take shelter under excuses of resource crunch anymore."

> During the discussions, some Ministers made out a case for continuing with the ongoing pattern of funding even after the Tenth Plan Period wherein the Centre picks up 75 per cent of the bill on SSA with each State giving the remaining 25 per cent. Mr. Singh assured them that he would take up the issue with the Planning Commission during the mid-term appraisal of the Tenth Plan. Under the current scheme, the States will have to pick up 50 per cent of the expenditure from the Eleventh Plan.
>
> Responding to his plea that political differences be kept out of the SSA, the Ministers including those from parties outside the United Progressive Alliance committed themselves to the universalisation of elementary education."

The statement of the Minister in most open terms declares the SSA as a "national agenda" and emphasise for its implementation by putting all best efforts. It also make it clear that every citizen of the country is contributing for mass literacy by bearing Education Cess.

According to the framework for implementation relating to the SSA declared by Ministry of Human Resource Development, Department of Education and Literacy, the assistance under the programme will be on 85:15 sharing arrangement during 9th plan, 75:25 sharing arrangement during 10th plan and 50:50 sharing thereafter between the Central Government and the

State Governments. The State Governments are under obligation to maintain the level of investment in elementary education as it was in 1999-2000. The Government of India for implementing the SSA is releasing its funds direct to the State Implementation Society, i.e. the respondent Council in the present case. No fund other than the assistance given by the Government is available to the respondent society.

The management structure of the Council as well as the SSA is having absolute control of the Government. Relevant to note here that a separate department of the elementary education and literacy has been created by the Government of India for implementing the SSA and other programmes of similar nature. In order to facilitate convergence and a holistic prospective a single bureau of education is also constituted. A general council of the SSA, at national level is headed by Hon'ble Prime Minister with the Union Minister for Department of Human Resource Development, as its Vice Chairman. The Secretary, Department of Elementary Education and Literacy is the Vice Chairperson of the executive committee and the Joint Secretary (Elementary Education) is Director General of the national mission of the SSA. The under Secretaries and the Section Officers in the Elementary Education Bureau alongwith the office staff are part of the national mission.

The State mission authority i.e. the respondent Council is headed by the Chief Minister and its executive committee by Chief Secretary of the State. The other members are also nominated by the Government and are the representatives of the executive. The administrative nature of the respondent Council, therefore is absolutely governmental. From the narration above, it can safely be concluded that :-

(1)the SSA and all other projects undertaken by the Government for universalisation of elementary education are part of “national agenda” for nation building, thus, the Council is having a responsibility to implement a national policy that is effecting not only the public at large but also the future of the nation. The service rendered by the respondent i.e. universalisation of the elementary education, is a constitutional obligation of the State;

(2)the Central and the State Government are the sole funding source of the Council and the State have complete check and supervision on that;

(3)the administrative set up of the Council is created by Government and that is having deep and pervasive State control as the entire governing body being manned by the ex-officio members including the Chief Minister of the State and founded by the State Government; and

(4)the total control of the Council and the projects undertaken by it is in the hands of the State executive and the persons nominated by it.

The Council, thus, qualifies the tests to be considered as “State” under Article 12 of the Constitution of India, as such is amenable to writ jurisdiction.

Beside the above, two other preliminary objections are also raised and those are:-

(1)the petitioners being engaged under different orders, on different dates, in different Districts with different Clusters have no common cause of action and, therefore, a common writ petition on their behalf could not be filed in view of the provisions of Rule 375 of the Rajasthan High Court Rules;

(2)the petitions for writ deserve to be thrown at the threshold as the petitioners made a false statement in the petitions for writ that substantial part of aid given by the Government of India shall be consumed in payment of salary whereas the expenditure of management cost including the salary is not more than 6% of the total budget allocation.

It is urged by learned counsel for the respondent Council that under Rule 375(4) of the Rajasthan High Court Rules, a writ petition on behalf of more than one person can be filed, if, the relief is

founded on same cause of action and in the instant matters the petitioners may have a common cause of action but not the same cause of action, as such these common petitions for writ cannot be maintained.

I am not at all impressed with the contention so raised, as from the facts stated in succeeding paras it will reveal that the cause of the petitioners is the discrimination arose due to illusionary classification made by the respondents among the persons belonging to same class. The High Court while exercising its extra ordinary jurisdiction have ample power to meet little differences of facts of different petitioners while granting relief and that even by molding the relief. Beside that, the authority of this Court injected by Article 226 of the Constitution of India to issue prerogative writs, orders and directions cannot be calm down by the force of any provision of procedural law. The writ Court, looking to the facts and circumstances of every case, may determine and adopt its own procedure to adjudicate an issue brought before it to ensure and protect fundamental, constitutional and other rights of a citizen.

The second preliminary objection is of also no consequence as whatever concealments alleged to be made or the statements those are said to be false are having no material effect in settling the controversy involved in these petitions for writ.

To deal with the controversy involved in this petitions for writ on merits, the factual matrix that requires notice is that in March, 1990 the World Conference for “Education for All” stressed greater commitment and willingness to invest for primary education in developing countries. “Lok Jumbish” was launched in the year 1992 with the Assistance of certain European funding agencies and was extended in the State of Rajasthan with a holistic understanding about the problem of universalisation of elementary education. The project focused attention on decentralisation, people participation, construction of school buildings, development of innovative teaching learning materials, participative teachers training, enhancement of institutional capacities and the movement in learning levels. A priority as a strategy was given to effectively operate in low literacy areas and disadvantaged sections of society.

Under a decision of the Government of Rajasthan a society in the name of “Lok Jumbish Parishad” was constituted and registered under the Act of 1958 for advancement of basic education and implementation of Lok Jumbish Project in the State. The Lok Jumbish Council by a notification dated 24.10.2001 invited eligible and desirous persons to avail selections on various posts such as Assistant Project Officer (Building), Cluster Incharge (Sankul Prabhari), Lower Division Clerks and Peons in different clusters

in the State by facing interview on 8th, 9th and 10th November, 2001 at different district headquarters. A selection committee consisting of District Collector or his nominee, Sub Divisional Magistrate, The District Project Coordinator, District Education Officer and in the event of his absence by Senior Most representative, the Officer of the Lok Jumbish Parishad and a representative of non-governmental organisation as proposed by the District Project Coordinator, Lok Jumbish Parishad interviewed the eligible and desirous persons who came forward for appointment on various posts in pursuant to the notification dated 24.10.2001.

As a consequent to the selection proceedings under the notification referred above 748 persons including the petitioners were selected on various posts under Lok Jumbish Project in various clusters. Pertinent to note here that a society in the name of "Purva Sainik Welfare Cooperative Society" (hereinafter referred to as "the Cooperative Society") at this juncture, first time appeared on the scene by informing the petitioners and other persons selected in pursuant to the notification dated 24.10.2001 that on being selected they are to join duties through the cooperative society.

From pondering of facts, what appears is that an agreement/contract arrived between the "Lok Jumbish Parishad" and the Cooperative Society to supply

performing hands to “Lok Jumbish Parishad” and for that the Cooperative Society receive 1% of the total wages paid to the persons so engaged. The payment of wages was also required to be made through the cooperative society, however, it is not in dispute that the petitioners and other similarly situated persons faced interview in pursuant to the notification dated 24.10.2001 issued by the “Lok Jumbish Parishad” and they were selected by a selection committee constituted by “Lok Jumbish Parishad” and they were appointed for the purpose of discharging their duties spelled out by the “Lok Jumbish Parishad” and they worked for Lok Jumbish Project.

Prior to engagement of the petitioners and other similarly situated persons the “Lok Jumbish Parishad” during the period from 1992 to 1998 employed about 948 persons to discharge duties under Lok Jumbish Project on the posts available, those are of the Assistant Project Officer (Building), Cluster Incharge, Lower Division Clerks and Peons. According to the petitioners the 748 persons employed by the “Lok Jumbish Parishad” in the year 2001 were discharging the duties exactly similar to the duties discharged by the 948 persons employed during 1992 to 1998 on the posts concerned.

The Lok Jumbish Project came to an end on 30.6.2004, however, prior to that the respondent

Council was declared as a nodal agency for implementing DPEP and SSA. The governing committee of the Lok Jumbish Council met on 11.6.2004 presided over by the Chief Minister and was attended by the Education Minister, Chief Secretary, the Chairman of the "Lok Jumbish Parishad", Education Secretary and the Principal Secretary (Finance), unanimously appreciated the work done by the persons employed under Lok Jumbish Project and discussed the issue with regard to their absorption in service under the SSA. The relevant portion of the minutes of the meeting dated 11.6.2004 reads as follows:-

"सभी के विचारों के उपरांत मानीय मुख्यमंत्री महोदया ने कहा कि -'परियोजना का कार्य बहुत अच्छा रहा है। अपने निर्धारित लक्ष्यों से ज्यादा उपलब्धियां पाकर एक अनुकरणीय कार्य किया है। लोगों की भागीदारी भी अच्छी रही है। इस मजबूती को बनाये रखा जाना चाहिए तथा इनका उपयोग आगे किया जाना चाहिए। परियोजना की विशेषज्ञता का फायदा सर्व शिक्षा अभियान को होना चाहिए।

तदुपंरात सर्व सम्मति से यह निर्णय लिया गया कि लोक जुम्बिश परिषद का विकल्प (3) के अनुसार विघटन कर दिया जावे।

बिन्दु संख्या 5. लोक जुम्बिश परिषद के मानवीय एवं भौतिक संसाधनों के उपयोग के बारे में।

कार्यकारी समिति के अध्यक्ष, श्री बी.एल. शर्मा ने कहा कि-"चूंकि लोक जुम्बिश परिषद के विघटन का निर्णय लिया गया है अत: अब इसके मानवीय एवं भौतिक संसाधनों के उपयोग के बारे में निर्णय लिया जाना अपेक्षित है। उन्होंने परियोजना में कार्यरत निम्न प्रकार के चार श्रेणी कार्मिकों के बारे में विस्तार से जानकारी दी:-

1. प्रतिनियुक्ति पर	-	534
2. लोक जुम्बिश अनुबंधित कार्मिक-		948
3. एजेंसी से	-	748
4. गैर सरकारी संस्थाओं से	-	330
	कुल	2569

इस प्रस्ताव पर माननीय शिक्षा मंत्री, मुख्य सचिव, अध्यक्षक, लोक जुम्बिश, शिक्षा सचिव, प्रमुख शासन सचिव (वित्त) ने एकमत अपने विचारों में परिषद के हर प्रकार के कार्मिकों के कार्य की मुक्त कंठ से सराहना की एवं उनके प्रति माननीय दृष्टिकोण रखकर उनके भविष्य के लिये निर्णय करने के सुझाव रखें।

माननीय मुख्य मंत्री महोदया ने स्पष्ट रूप से कहा कि लोक जुम्बिश कार्मिकों ने कठिन परिस्थितियों में एवं दुर्गम क्षेत्रो में पूर्ण निष्ठा, लगन से मिशन भावना से कार्य किया है। उनके इस योगदान को ध्यान में रखकर इनके प्रति मानवीय दृष्टिकोण के अंतर्गत इन्हें सर्व शिक्षा अभियान में समाहित करके वहां काय्र करने का अवसर दिया जायेगा। इस संदर्भ में माननीया मुख्य मंत्री जी ने निम्न निर्णय लिये:-

1. प्रतिनियुक्ति के 543 कार्मिकों को आवश्यकतानुसार सर्व शिक्षा अभियान में रखा जा सकता है।

2. सर्व शिक्षा अभियान के अंतर्गत भारत सरकार द्वारा जारी दिशा निर्देशों के अनुसार सर्व शिक्षा अभियान में विशिष्ट योग्यताओं वाले अनुभवी व्यक्तियों को वार्षिक अनुबंध पर लिया जा सकता है। चूंकि लोक जुम्बिश में वर्तमान में कार्यरत (लोक जुम्बिश कार्मिक नियमों में अनुबंधित 948 कार्मिक)व्यक्ति सामुदायिक गतिशीलता, जेण्डर,शिक्षक प्रशिक्षण, मॉनीटरिंग, वैकल्पिक शिक्षा आदि क्षेत्रों की विशिष्टता रखते है, अत: उन्हें आवश्यकतानुसार राजस्थान प्राथमिक शिक्षा परिषद द्वारा सर्व शिक्षा अभियान में उनके वर्तमान वेतन पर (वार्षिक अनुबंध पर) समाहित किया जाना चाहिए।

3. एजेंसी के माध्यम से कार्यरत 748 कार्मिकों को सर्व शिक्षा अभियायन में यदि एजेंसी के माध्यम से अतिरिक्त कार्मिक रखे जाते हैं, तो प्राथमिकता दी जायेगी।

4. गैर सरकारी संस्थाओं के 330 कार्मिक गैर सरकारी संस्थाओं (NGO)द्वारा रखे गये है। राजस्थान प्राथमिक शिक्षा परिषद सर्व शिक्षा अभियान में गैर सरकारी संस्थाओं का उपयोग करना चाहे तब इन्हें चयन में प्राथमिकता दी जायेगी।

मुख्यमंत्री जी ने यह भी कहा कि इसके क्रियान्वयन हेतु राजस्थान प्राथमिक शिक्षा परिषद की शाषी परिषद की बैठक बुलाकर जल्दी ही उचित कार्यवाही कर ली जाये।

माननीय मुख्य मंत्री जी ने इच्छा जताई की ये कार्मिक सर्व शिक्षा अभियान में भी इसी लगन से कार्य करके इस अभियान को सफल बनाने में पूर्ण योगदान देंगे। उन्होंने कहा कि लोक जुम्बिश की व्यवस्थाये, जिनका जिक्र भारत सरकार ने किया है उनका सर्व शिक्षा अभियान में सही ढंग से क्रियान्वयन किया जाये।"

From reading of of the minutes of the meeting dated 11.6.2004, it is apparent that a conscious decision was taken to give preference to 748 employees employed under the Lok Jumbish Project while making appointments to the SSA. The governing council while appreciating the work done by the personnels employed under the Lok Jumbish Project emphasise to utilise all human and physical resources of “Lok Jumbish Parishad” for SSA.

The governing council of the Rajasthan Primary Education Council also met on 28.6.2004 and resolved to utilise the services of the persons employed under Lok Jumbish Project through agencies

with the SSA. However, the respondent Council though absorbed 948 persons working with “Lok Jumbish Parishad” employed during the period from 1992 to 1998, but did not choose to utilise services of the 748 persons including the petitioners, who were engaged for “Lok Jumbish Parishad” under the notification 24.10.2001. The Council decided to fill in the vacancies pertaining to the posts of Additional District Project Coordinator, Assistant Project Coordinator, Assistant Engineer, Programme Officer, Junior Engineer, Block Reference Centre Incharge, Cluster Reference Centre Incharge, Reference Person and the Lower Division Clerks through appointment by way of deputation under the notification that published in “Rajasthan Patrika” dated 24.9.2004.

Hence, these petitions for writ are preferred seeking a direction to absorb the petitioners in service of the SSA by treating them at same pedestal with 948 other persons employed under Lok Jumbish Project during the period from 1992 to 1998. A direction is also sought to quash the notification for holding selections for making appointments to the SSA by way of deputation.

In reply to the writ petitions a classification is sought to be made by the respondent Council among the persons working with Lok Jumbish on basis of their mode of recruitment. According to that

the petitioners being engaged through the cooperative society forms an absolutely different class then the persons employed by the Lok Jumbish Council itself during the period from 1992 to 1998. It is asserted that the petitioners were engaged with Lok Jumbish Project on being supplied by the cooperative society under a contract and that cannot be extended to the respondent Council and the SSA, undertaken by it.

The order of engagement in favour of the petitioners was issued by the cooperative society, payment of wages to them was made by the cooperative society and the terms of their service were also regulated through the order of their engagement issued by the cooperative society, as such no liability could be fixed on the Council to continue them with the SSA as done in the case of other 948 employees working under Lok Jumbish Project. A specimen copy of the communication/order aforesaid is available on record as Anx.3 wherein it is prescribed that the petitioners have to report to the Director, Lok Jumbish Council, Jaipur or to the District Project Coordinator through the employer i.e. the cooperative society. The communication aforesaid also stipulates for payment of wages on 10th day of every month by the cooperative society. In view of the contents of the communication above, it is emphasised by counsel for the respondents, that as a matter of fact the petitioners and other similarly situated persons were in employment of the

cooperative society on contract basis and their service was utilised by the Lok Jumbish Council under an agreement with the cooperative society.

It is emphasised by counsel for the petitioners that the petitioners faced selection proceedings to be considered for appointment with Lok Jumbish Project under a notification issued by Lok Jumbish Parishad. While facing selection proceedings the cooperative society was nowhere in the picture. If any agreement arrived between the Lok Jumbish Parishad and the cooperative society then that was never disclosed to the petitioners, as such that has no effect so far as the selection and appointments of the petitioners is concerned. According to counsel for the petitioners as a matter of fact the agreement between the Lok Jumbish Council and the cooperative society at one hand may be an effort to provide some financial aid to the cooperative society as it is having membership among the former defence personnels, and at the same time a tactics to bring out the petitioners from the records of the Lok Jumbish Project, just to deprive them from the rights attached to an employee. It is asserted that in the entire selection proceedings the cooperative society was having no say. The society was related only to the extent of disbursement of wages to the petitioners. It is straneously argued that the selection of the petitioners was made by a selection committee constituted by Lok Jumbish Parishad and that

selection committee was of same nature to which the 948 persons were employed with Lok Jumbish Parishad during the period 1992 to 1998. The petitioners discharged their duties under Lok Jumbish Parishad in the rural areas of the State and whatever work done by them was exactly same to the work done by the 948 other persons holding various posts under Lok Jumbish Parishad.

While disagreeing with the effort of counsel for the petitioners to establish that the petitioners and the 948 other persons employed through Lok Jumbish Parishad during 1992 to 1998 forms one class, it is asserted by counsel for the respondents that the petitioners from the day first were knowing that the appointment is given to them through a cooperative society and in the communication Anx.3 whereby the petitioners were informed about their appointment, the cooperative society is shown as their employer. The fact about screening of the petitioners by the same nature of selection committee is not disputed, however, it is urged that merely on that count the fact about a different employer cannot be over looked. According to the respondents the Lok Jumbish Parishad never made payment of wages to the petitioners, they were never on the role of the Lok Jumbish Parishad and they being supplied only to do specific work with Lok Jumbish Parishad by the cooperative society cannot claim any right by alleging the existence of master and servant relationship between them and the Lok Jumbish Parishad.

Considered the rival contentions raised by counsel for the parties.

With the factual background as stated above, the principal question, that requires adjudication, is that whether the petitioners, who were engaged through the cooperative society for discharging the duties with the Lok Jumbish Project and the 948 persons employed by the Lok Jumbish Parishad, stand at same pedestal and the classification made between them is rational and reasonable and not illusionary? Whether not to absorb the petitioners with SSA is discriminatory and is in violation of Articles 14 and 16 of the Constitution of India?

The Constitution of India is a unique legal and social document that by its preamble constitute a republic to secure equality of the status and of opportunity among its citizens. To make the concept of equality a reality, it is also included as a fundamental right of every person. Article 14 of the Constitution of India, with its all vigour protects every person from all ills, germinating from discrimination, arbitrariness, subjectivity, partiality, unreasonablity and also provide a way to extend security to all its citizens for social, economic and political justice, equality of status and opportunity and to develop fraternity in society. It is

true that the concept of equality under the Constitution of India permits reasonable classification but at the same time forbids unreasonable and illusory classification to sterlise discrimination, arbitrariness and unreasonability. The Constitution of India to operationalise and to implement the concept of equality has equipped the citizens with extra ordinary constitutional remedies by way of seeking writs, orders and directions under Articles 32 and 226. These are the most effective weapons available to operationalise and implement fundamental and constitutional rights of a person or citizen, as the case may be. These are the weapons to ensure the equality in real. While exercising the powers under Article 226 of the Constitution of India the High Court possess ample authority to inquire about the efforts made intentional or non-intentional to cover discrimination under the robs of reasonableness. The Courts by making all necessary inquiry have power to strip the shield if any effort is made by the State or its agency or functionary to make the equality illusionary.

In the instant matters admittedly 748 persons including the petitioners were selected for their engagement on different posts in different districts/clusters under Lok Jumbish Project as a consequent to the selection proceedings conducted under a notification issued by Lok Jumbish Parishad. The cooperative society first time came on scene by

informing the petitioners about their selection under Lok Jumbish Project after completion of selections by a competent committee constituted by Lok Jumbish Parishad. The committee that screened the petitioners was of same nature that selected the persons employed with Lok Jumbish Project from 1992 to 1998. The duties discharged by the petitioners and the persons employed prior to them on the post concerned was of same nature and the wages granted to them were also same. The only difference was that the wages to the petitioners were disbursed through the cooperative society but the persons employed earlier were getting salary through the Lok Jumbish Parishad itself. It is also important to note that the governing council of the SSA that was presided by the Chief Minister was also of the view that a preference should be given to the employees even selected by the agency.

I do not find any merit in the contention of the learned counsel for the respondent Council that the petitioners accepted appointment under Lok Jumbish Project knowing it well that the cooperative society sponsored/supplied them to the Lok Jumbish Parishad, therefore, they should be estopped to claim any right with SSA by claiming themselves as employee of the Lok Jumbish.

In the country like ours due to prevailing unemployment the young aspirants keep their eyes only

on employment and not on the tactics adopted by the employer to deny their rights related with employment. The petitioners though accepted the information for their selection through the cooperative society but it does not alter the basic fact that for all practical purposes the 748 persons selected in the year 2001 including the petitioners were working with Lok Jumbish Project. I really failed to gather any fairness to get the petitioners engaged through the cooperative society though the selections were made by the Lok Jumbish Parishad and the services of the petitioners and other similarly situated persons were utilised under Lok Jumbish Parishad. In the facts of present case the cooperative society at the most can be considered as an agency to disburse wages to the petitioners.

From the facts discussed, I am convinced that the cooperative society was introduced in the process of appointment only with an object to deprive the petitioners and similarly situated persons from the rights attached with employment and also to extend some financial aid to the cooperative society having membership among the retired defence personnels. The difference on basis of that an effort is made to prove a reasonable classification in the instant matters is having no rational, therefore, the same is illusionary and by creating such illusion the concept of equality cannot be victimise. An agency of a modern constitutional state with responsibility to implement

an enormous social development programme like universalisation of elementary education cannot be permitted to adopt a tactics that by its nature sacrifice uniformity among equals.

In view of the discussion above, the 748 persons appointed as a consequent to the selection proceedings taken under the notification dated 24.10.2001 are required to be treated as employees of the Lok Jumbish Parishad and not of the cooperative society. These employees also deserve to be treated at par with the 948 employees of Lok Jumbish Parishad appointed during the period commencing from 1992 to 1998.

An another remarkable aspect of the matter is that the 748 persons including the petitioners who were employed in the year 2001 and 948 persons who were appointed under Lok Jumbish Project during the year 1992 to 1998 worked with all sincerity and dedication to make the Lok Jumbish Project a big success and the work done by these employees was appreciated by all the persons concerned including the Chief Minister of the State. A decision when was taken to continue the employees of the Lok Jumbish Parishad working under Lok Jumbish Project with SSA, then the petitioners and other similarly situated persons legitimately expected for their continuation in service. The respondent Council without having any public interest or

reasonable cause did not choose to continue the petitioners in service. There being no reasonable cause available to the respondents for not fulfilling legitimate expectation of the petitioners and other similarly situated persons, this Court consider itself able to come forward to their aid as they failed to obtain redress from the respondents. It is pertinent to note that the respondent is filling in these vacancies by way of deputation from the employees of the Government of Rajasthan already working with higher pay scales. The SSA have to pay those employees wages atleast in their existing pay scales whereas the petitioners are capable to discharge the same duties at consolidated salary. The issue, as said to me by the counsel for the parties, with regard to appointment on deputation with SSA being under consideration before the Division Bench, I am not touching that, however, it can be very well said that no public interest can be served by making appointments on deputation that may be a reason to ignore the legitimate expectation of the petitioners.

For the reasons whatever discussed above, these petitions for writ deserve acceptance. Accordingly, the same are allowed. The respondents are directed to treat the 748 persons including the petitioners who were selected to work under Lok Jumbish Project in pursuant to the notification dated 24.10.2001 at par with the 948 persons appointed with

the Lok Jumbish Project during the period from 1992 to 1998 and these persons be also absorbed in service of the SSA on the posts corresponding to the post held by them under Lok Jumbish Project.

Before parting with the cases, I extend my gratitude to www.un.org.in, that I used to enrich and update my information and knowledge in the field of universalisation of elementary education.

(GOVIND MATHUR),J.

Kkm/ps.